

HOUSE BILL 1317

By West

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 11, Part 6, relative to use of deadly force
in self defense of oneself or others.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-11-611, is amended by deleting
the section in its entirety and substituting instead the following:

Section 39-11-611.

(a) As used in this section:

(1) "Curtilage" means the area surrounding a dwelling that is necessary,
convenient and habitually used for the family purposes and for those activities
associated with the sanctity of a person's home.

(2) "Dwelling" means a building or conveyance of any kind, including any
attached porch, whether the building or conveyance is temporary or permanent,
mobile or immobile, which has a roof over it, including a tent, and is designed for
or capable of use by people.

(3) "Residence" means a dwelling in which a person resides either
temporarily or permanently, or is visiting as an invited guest, or any dwelling,
building or other appurtenance within the curtilage of such residence.

(4) "Vehicle" means a conveyance of any kind, whether or not motorized,
which is designed to transport people or property.

(b)

(1) A person who is not engaged in unlawful activity and is in a place
where such person has a right to be has no duty to retreat before threatening or
using force against another person when and to the degree the person

reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force.

(2) A person who is not engaged in unlawful activity and is in a place where such person has a right to be has no duty to retreat before threatening or using force intended or likely to cause death or serious bodily injury if:

(A) The person has a reasonable belief that there is an imminent danger of death or serious bodily injury;

(B) The danger creating the belief of imminent death or serious bodily injury is real, or honestly believed to be real at the time; and

(C) The belief of danger is founded upon reasonable grounds.

(c) Any person using force intended or likely to cause death or serious bodily injury within a residence, dwelling or occupied vehicle is presumed to have held a reasonable belief of imminent death or serious bodily injury to self, family, a member of the household or a person visiting as an invited guest when that force is used against another person, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence, and the person using defensive force knew or had reason to believe that an unlawful and forcible entry occurred.

(d) The presumption established in subsection (c) shall not apply if:

(1) The person against whom the force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, provided such person is not prohibited from entering the dwelling, residence, or occupied vehicle by an order of protection, injunction for protection from domestic abuse, or a court order of no contact against that person;

(2) The person against whom the force is used is attempting to remove a person or persons who is a child or grandchild of, or is otherwise in the lawful

custody or under the lawful guardianship of, the person against whom the defensive force is used;

(3) The person using force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) The person against whom force is used is a law enforcement officer, as defined in §39-11-106(21), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties, and the officer identified himself or herself in accordance with any applicable law, or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(e) The threat or use of force against another is not justified:

(1) If the person using force consented to the exact force used or attempted by the other individual;

(2) If the person using force provoked the other individual's use or attempted use of unlawful force, unless:

(A) The person using force abandons the encounter or clearly communicates to the other the intent to do so; and

(B) The other person nevertheless continues or attempts to use unlawful force against the person; or

(3) To resist a halt at a roadblock, arrest, search, or stop and frisk that the person using force knows is being made by a law enforcement officer, unless:

(A) The law enforcement officer uses or attempts to use greater force than necessary to make the arrest, search, stop and frisk, or halt; and

(B) The person using force reasonably believes that the force is immediately necessary to protect against the law enforcement officer's use or attempted use of greater force than necessary.

SECTION 3. Tennessee Code Annotated, Title 39, Chapter 11, Part 6, is amended by adding the following new §39-11-622:

(a)

(1) A person who uses force as permitted in §§39-11-611-- 39-11-614, or §29-34-201, is justified in using such force and is immune from civil liability for the use of such force, unless:

(A) The person against whom force was used is a law enforcement officer, as defined in §39-11-106(21);

(B) The law enforcement officer was acting in the performance of his or her official duties; and

(C)

(i) The officer identified himself or herself in accordance with any applicable law; or

(ii) The person using force knew or reasonably should have known that the person was a law enforcement officer.

(b) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by a person in defense of any civil action brought against such person based upon the person's use of force if the court finds that the defendant was justified in using such force pursuant to §§39-11-611--- 39-11-614, or §29-34-201.

SECTION 4. This act shall take effect July 1, 2007, the public welfare requiring it.